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*Some of the Public Services  
of  
Honorable Philander Chase Knox*

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SPEECH

*of*

HON. JAMES FRANCIS BURKE

*before the*

Pennsylvania Delegation  
in Congress

*on*

Wednesday, December 4, 1907

*and*

Suggestions respecting legislation made to Con-  
gress upon invitation of Senator Hoar  
and Representative Littlefield  
by Mr. Knox

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*Gentlemen of the Pennsylvania Delegation:*

Theodore Roosevelt, than whom no man living has had wider opportunities of observation or greater ability to accurately appreciate and correctly describe the character of man needed in the solution of the many perplexing problems that confront our people, never coined more convincing and conclusive sentences than when in a public speech he described the Honorable Philander Chase Knox to the people of the United States in these words:

"As we face these infinitely difficult problems, let us keep in mind that though we need the highest qualities of the intellect in order to work out proper schemes for their solution, yet we need a thousand times more, what counts for many, many times as much as intellect—we need character.

"We need common sense, common honesty and resolute courage. *We need what Mr. Knox has shown:* the character that will refuse to be hurried into any unwise or precipitate movement by any clamor, whether hysterical or demagogic, and on the other hand, the character that will refuse to be frightened out of a movement by any pressure, still less by any threat, express or implied."

WORTHY OF EVERY WORD.

In the light of present needs these words seem to bear the very impress of inspiration. Yet, however appropriate the time, however apt the description, however great the

President, however generous the impulse of him who uttered them or gratifying to the friends of the great Pennsylvanian of whom he spoke, we find the striking force and supreme felicity of it all in the fact that it was but one of many expressions of a kindred character which the Chief Magistrate of the Nation has found it proper to make regarding the achievements of the most helpful companion he has known in the greatest crusade that was ever waged against evils organized and existing in the name and under the forms of law.

Ambitious that these great problems should be permanently solved and that these great policies of our great President should be perpetuated, the Pennsylvania delegation on a former occasion similar to the present, suggested Pennsylvania's favorite son as the logical successor of Theodore Roosevelt as President of the United States.

#### LOYALTY OF HIS NATIVE STATE.

The substantial and thoughtful approval with which the proposal was met in all sections of the country was repeated and enlarged upon when the Pennsylvania Republican State convention, composed of delegates elected for the first time under the law by a direct vote of the people, unanimously endorsed our candidate for the Chief Magistracy of the Nation.

By way of ratification and furnishing additional evidences of the genuine enthusiasm and absolute unanimity of senti-



ment back of this great proposition, the Republican State League, the Republican County and City Committees, and in fact all branches of the party throughout the Commonwealth have since endorsed the little giant whom every proud and patriotic Pennsylvanian hopes and believes will be the next President of the United States.

#### EARNESTNESS OF EXPRESSION.

While we believe that there is not a single section of the Union that is not rich enough in tradition, powerful enough in interest and patriotic enough in purpose to justify it in making a legitimate effort to name the next President of the United States, yet we hold that the pride of states and the politics of sections are secondary matters in affairs of such vital concern to the whole people.

#### MAIN CONSIDERATION THE MAN.

The main consideration should be the man. The wrong man can not live in the right state and the right man can not live in the wrong state when it comes to choosing the President of a Republic composed of all the states.

The evils of sustaining geographic lines and sectional prejudices in American politics are so manifold and so manifest that every citizen whose patriotism is broad enough to embrace the Union is opposed to the unhealthy doctrine that permits the doubts or certainties of local situations to dominate 85,000,000 people in the choice of their Chief Executive.

Provincialism has no place in the Presidential politics of this Republic.

#### ERA OF GREAT PROBLEMS.

This epoch is crowded with vital problems and great undertakings, and fraught with more than the ordinary responsibilities that attach to public office and the performance of public duties.

Only the trained warrior against existing evils and the trusted conservator of constitutional rights should be allowed on guard by the American people.

Never before were they less inclined to experiment in manning the ship of state.

In the domain of public duty new pathways have been blazed; new light has been shed upon constitutional problems, a more exacting public spirit has succeeded, and more critical responsibilities than ever confront the public servants of the present and the future.

#### ONLY TRIED MATERIAL WANTED.

To the discharge of these responsibilities the people will insist upon calling the most capable minds and the most courageous characters in the arena of American public service, and, with supreme confidence in her ability to produce the man who, in a greater measure than any other living American, possesses the attributes that should make him the worthy successor of Theodore Roosevelt, the Keystone State

has presented to the nation the man who in Cabinet and Senate has proven his unquestioned capacity to rank with the greatest statesmen of his day.

#### WORDS FROM THE WHITE HOUSE.

In support of this assertion I might quote a portion of the letter made public at the White House when the President gave reluctant consent to the resignation of his faithful friend and wise counsellor who had been called to a seat in the Senate of the United States.

"My dear Mr. Knox:

"\* \* \* To your high professional qualifications you have added unflagging zeal and an entire indifference to every consideration save the honor and interest of the people at large. Many great and able men have preceded you in the office you hold, but there is none among them whose administration has left so deep a mark for good upon the country's development.

"Under you it has been literally true that the mightiest and humblest in the land have alike had it brought home to them, that each was sure of the law's protection while he did right, and that neither could hope to defy the law if he did wrong. In what you have done you have given proof not merely of the profound learning of the jurist, but of the bold initiative and wide grasp of the statesman. You have deeply affected for good the development of our entire political system in its relations to the industrial and economic tendencies of the time.

"For all you have done I thank you most earnestly.

not only on my own behalf, but on behalf of the public whom you have served with such single-minded devotion."

And now that we may ascertain some of the acts that afforded a foundation for the President's splendid tribute, let us glance for a moment over the record of the man of whom he wrote in terms of a character such as he has never written of any other living American.

During the last few years the disclosure of evils has been so widespread, the application of remedies has been so rapid and cures in many instances have been so complete in matters of the most vital importance to the welfare of the people and the preservation of the fundamental purposes of our government, that we are apt to lose sight of both methods and men in the bewildering swiftness of the transformation.

#### CENTRAL FIGURES IN CONTEST.

While through it all the central, commanding figure in the crusade was a brave and brilliant President, as the struggles practically all involved the rehabilitation and enforcement of old, and the framing and enactment of new laws, the arm upon which he rested, the mind upon which he most relied was that of his trusted personal friend and great Attorney-General, who with unflinching courage and unerring clearness pointed out the pathways over which the journey must be made if the eternal principles of justice

were to prevail in the obliteration of great evils and the elevation of the functions of the Federal Government above the atmosphere of doubt.

#### CHAMPIONS IN THE CONFLICT.

The extensive and startling growth of combinations dealing in the necessities of life and engaged in interstate commerce, accompanied by a bold defiance of Federal authority, crystalized in 1902 in a conflict between two schools of thought, one led by arrogant combinations of capital and the other led by Theodore Roosevelt and Philander Chase Knox representing the American people.

As if encouraged one by the other, in a single year the large grain dealers and beef packers of the Middle West entered into illegal arrangements with the railroads for rebates and discriminating advantages in transportation, which gave them a complete monopoly of a business formerly enjoyed by a large number of persons over a wide area of territory, and still bolder in conception and broader in purpose than all previous attempts at crushing competition came the organization of the Northern Securities Company, the success of which meant the permanent throttling of trade in the great Northwest, and the ultimate control of all the great railroad lines of the country by combinations before which every shipper would be helpless, and the government itself powerless to promote the thrift or protect the interests of its people.

## BLAZING NEW PATHWAYS.

The supreme test of the right and the efficiency of the Federal government to crush this great evil immediately followed. Prompt action became necessary along new and untried lines, and upon a theory of the Constitution and existing laws more comprehensive and courageous than any interpretation that had ever before been attempted in the actual administration of our system of jurisprudence.

Attorney-General Knox advised the President that the plenary power of Congress over all kinds of transportation *and its instrumentalities* had not been exhausted by the Sherman Act, nor by the Interstate Commerce Act; that in his opinion the Sherman Act did reach the Northern Securities situation, and that immediate steps should be taken to secure interpretations of all existing laws, with a view to confirming the theory of the completeness of the power of the Federal government in its application to the situation, and as a guide for new legislation.

For the purpose of at once allaying the apprehension of the millions of thrifty Americans interested in seeing these gigantic evils stricken down in their early growth, the Attorney-General in a speech before the Pittsburg Chamber of Commerce, on October 14, 1902, elaborated upon what was to be the attitude of the administration in the crisis that had developed.

## EPOCH MAKING SPEECH.

The keynote of that speech was the great underlying principle upon which rested the successful struggle against discrimination, that followed.

Language could not be more lucid than that in which Mr. Knox described the necessary remedy. He said:

*"Corporations serving the public as carriers and in similar capacities should be compelled to keep the avenues of commerce free and open to all upon the same terms and to observe the law as to its injunctions against stifling competition. Moreover, corporations upon which the people depend for the necessities of life should be required to conduct their business so as regularly and reasonably to supply the public needs. \* \* \**

*"If these serious evils were eradicated and a higher measure of administrative responsibility required in corporate officers, a long step would be taken toward allaying the reasonable apprehension that the unchecked aggression of the trusts will result in practical monopoly of the important business of the country."*

As a result of the subsequent enforcement of this policy the monopolies created by secret and preferential rates for railroad transportation were successfully assailed in the Circuit Court of the United States at Chicago and Kansas City in suits in equity begun by the United States to enjoin against the violation of law prohibiting rebates and discriminations, and for the first time establishing the right of



the Attorney-General to appear for large numbers of people and sections of the country affected by a remedial law, a right which has since been made doubly certain by a statute enacted at the suggestion of this same Attorney-General.

#### NO CONSTITUTIONAL AMENDMENT REQUIRED.

At the inception of this governmental crusade against corporate abuses, it was contended by many eminent statesmen and jurists throughout the country that the cure lay only through the channel of constitutional amendment—a process so cumbersome, remote and uncertain that the very thought suggested dangerous delay, if not utter despair.

But doubt was dispelled and confidence created when the Attorney-General, whom the President and the people had come to look upon as their guiding genius through the wilderness of constitutional confusion, said in that same address:

“If the Sherman Act exhausts the power of Congress over monopolies, the American people find themselves hopelessly impotent, facing a situation fraught with the most alarming possibilities with which neither the Federal nor the State governments can deal.

“Can it be possible that the people of the United States, feeling the pressure of undoubted evils, are nevertheless totally powerless? Is it true that, although they know the nature of the wrong and are seeking a remedy, the Constitution, *as it stands*, does not permit them to pursue it; that amendment to that charter is first necessary; that the power of Congress



does not now extend over detriments injuring the entire body of citizens in their most vital concerns because these detriments originate in the states? I do not believe we find ourselves so helpless. When the currents of monopoly evil flow out over state lines and cover the country, not only entering but largely filling the channels of interstate and foreign trade, it will not do to say that the evil is beyond the national reach."

"It would seem monstrous to urge that Congress and the executive under its authority are powerless and must sit idly by and see the channels of interstate commerce made use of to the injury of the people by monopolistic combinations."

#### WON CONFIDENCE OF THE COUNTRY.

That the confidence of the country was centered in the Attorney-General as a result of his apparent mastery of the situation was illustrated two months later at the opening of the Fifty-Seventh Congress, when he was asked by the late lamented Senator Hoar, Chairman of the Judiciary Committee of the Senate, and the Honorable Charles E. Littlefield, Chairman of the sub-committee of the judiciary of the House of Representatives, to forward to these committees "Any suggestions that your reflection and experience shall suggest as to what further trust legislation may be desirable."

And it was in reply to these requests that he furnished the bold and sweeping suggestion:

"That as a first step in a policy to be persistently pursued until every industry, large and small, in the

country can be assured of equal rights and opportunities, and until the tendency to monopolization of the important industries of the country is checked, that all discriminating practices affecting interstate trade be made offenses to be enjoined and punished."

#### IN HARMONY WITH PRESIDENT.

In the great railroad rate struggle the harmony of purpose existing between the President and the Pennsylvania Senator is revealed in the statements made by Mr. Justice Moody, then Attorney-General, on October 29, 1906, in a speech delivered in the Academy of Music, Philadelphia, in which he said:

"I think it Providential that your great citizen (Mr. Knox), became Attorney-General, and I also think it was Providential that you withdrew him and put him in another place. For no man was more potential in the framing of that law than the Junior Senator from Pennsylvania. None stood more firmly at the back of President Roosevelt, and I wish to say now that in every principle of law involved in that bill there was not an iota of difference between Senator Knox and myself."

#### RESULTS OF A GREAT SPEECH.

The far-reaching influence of the speech delivered by Mr. Knox, at Pittsburg, on November 3, 1905, in which he outlined the administration's policy and blazed the way for the legislation necessary to crush the evils aimed at in the legislation that followed was attested in the closing debates on

the Rate Bill when Senator Dolliver, referring to the Pennsylvania Senator and the great service the latter had rendered, said:

"In drafting this bill, the framers of it were guided very largely by the speech delivered at Pittsburg by the Honorable Senator from Pennsylvania (Mr. Knox), a speech which reads almost like a judgment from the Supreme Bench."

#### REMEDIAL LEGISLATION RECOMMENDED.

It was Attorney-General Knox who, in 1902, recommended that in respect to railroad rebates, a penalty should be imposed upon the incorporated carrier and the beneficiary alike, and that the rights of the courts to restrain such practice at the suit of the United States should be provided for in new legislation. He recommended that it should be made unlawful to transport traffic by carrier subject to the "Act to Regulate Commerce" "at any rate less than such carrier's *published rate*," and that all who participated in the violation of such law should be punished. He recommended that comprehensive plans should be framed to enable the government to secure all the facts bearing upon the organization and practice of concerns engaged in interstate and foreign commerce essential to a full understanding thereof. He recommended the act to speed the final decision of cases under the anti-trust law.

And what is more gratifying to his friends and the people

than the recommendations which he made is the fact that they were promptly acted upon and became laws before the expiration of that session of Congress.

#### SPEEDY JUSTICE SECURED.

The Act to expedite the hearing and determination of suits under the anti-trust and interstate commerce acts was passed February 11, 1903. Under its provisions the Northern Securities case was set down for argument before the circuit judges of the Eighth Circuit, and argued in March, 1903.

#### NEW DEPARTMENT ESTABLISHED.

On February 14, 1903, the Department of Commerce and Labor was created, and in that department the Bureau of Corporations established, completing the government's power to make investigation into the organization, conduct, management and business of all corporations engaged in interstate and foreign commerce.

#### INTERSTATE COMMERCE LAW AMENDED.

Along the line of his suggestions already indicated, and pursuant to others which he made, Congress also amended the interstate commerce law by providing that anything done or omitted to be done by a corporate common carrier subject to the Act, which if done by an employee thereof would constitute a misdemeanor under the law, should also be held

to be a misdemeanor committed by such corporation; and furthermore, conferring jurisdiction upon the Circuit Courts of the United States to restrain by writ of injunction, or other appropriate process, departures from published rates, or any discriminations forbidden by law; requiring every common carrier subject to the law to publish his tariff rates or charges, and to maintain them; making it unlawful for any person or corporation to offer, grant, or give, or to solicit, accept or receive any rebate, concession or discrimination in respect to the transportation of any property in interstate or foreign commerce, whereby such property shall by any device whatever be transported at a less rate than the rate published by the carrier; and also making the rate published and filed with the Interstate Commerce Commission the legal rate.

It further provided that a prosecution by the government under this Act should not exempt the offending carrier from suits to recover damages by parties injured.

It provided also for the production of all books and papers, both by carrier and shipper, which directly or indirectly relate to the transactions, and the giving of testimony, whether such documents tend to criminate the party or not.

#### NON-PARTISAN TESTIMONIAL.

Regarding this constructive legislation, the non-partisan Interstate Commerce Commission has declared that:

“Without further reference to the changes made by this amendatory legislation, the Commission feels warranted in saying that its beneficent bearing became evident from the time of its passage. It has proved a wise and salutary enactment. It has corrected serious defects in the original law and greatly aided the attainment of some of the purposes for which that law was enacted. \* \* \*

“Indeed, it is believed that never before in the railroad history of this country have tariff rates been so well and so generally observed as they are at the present time.”

The inseparable identification of Mr. Knox with all these measures is proven not only by the recommendations which he made from time to time, but by the fact that he prepared bills embodying every idea in the legislation enacted for the correction of the evils over which the government has gained such a signal and splendid triumph; and as a sample of the manner in which these bills were treated, it is not amiss to state that Mr. Knox's amendment to the Interstate Commerce Act, relating to departures from freight rates “published by the carrier” was inserted by Mr. Elkins with the change of but a single word, and is now the most vital part of that splendid piece of legislation.

#### BEEF TRUST BROKEN.

In the meanwhile, the Department of Justice, under his administration, branded as outlaws the combinations of independent corporations to fix and maintain extortionate

prices of meats and drove them, when confronted with overwhelming evidence of guilt to the shelter of a demurrer to prevent the publicity of the evidence collected by the government.

His arguments in and personal management of the many other great cases which had to do with the testing of laws then upon the statute books are too familiar to this body and the people at large to require recounting here, but it is manifest that from the very inception of the crusade against those evils which were crushing competition, throttling trade, and gradually placing not only the great products of the country, but the markets in which they were bought and sold, and the channels of commerce through which they were reached, under the control of evil combinations, which insolently began to defy the government itself the one staunch and sturdy figure who stood unflinching through all the struggle, inspiring confidence in his Chief, and bringing victory to his people was the great Pennsylvania statesman of whose character and achievements the nation is justly proud.

#### RECORD RATIFIED BY ROOSEVELT.

In the light of this splendid record it is not difficult to understand the earnestness with which Theodore Roosevelt declared on October 4, 1906, that—

“During the last few years the National Government has taken very long strides in the direction of exercising and securing this adequate control over the great



corporations, and it was *under the leadership* of one of the most honored public men in our country, one of Pennsylvania's most eminent sons, the present Senator and then Attorney-General, Knox, that *the new departure was begun.*"

It is also manifest from that which I have already related, that his argument in the Northern Securities case before the Supreme Court, in which he won that memorable victory, while of the gravest importance to the nation, was but a mere incident attendant upon the great labor he was performing in outlining and establishing upon an everlasting foundation policies that were and are as vital to the maintenance of the government as any that have ever challenged the attention of the nation since it was first established.

#### SAFETY APPLIANCE LAW RESCUED.

Nor was his victory over the Beef Trust in the least degree more important or far-reaching in its consequences than was his bold and ingenious move when for the first time in the Nation's history he asserted the right of the government to intervene in a private damage suit as a result of which the defeat of an humble workman, who had sued the Southern Pacific Railroad under the Safety Appliance Act, was turned into a victory, and the constitutionality of that law fraught with such importance to the traveling public, and the great army of railway employes throughout the country, was vindicated and sustained.



## PEONAGE PROSECUTED.

Similarly bold in the initiative and similarly successful in the execution was the first prosecution ever instituted under the Peonage laws of the United States outside of the Territory of New Mexico, when in 1901 this same Attorney-General caused the indictment and conviction of those who sought to re-establish a species of slavery, which was doubly vicious because it based its right to exist upon the law itself. This practice of holding poor, ignorant, defenseless negroes in involuntary servitude, as a result of the connivance of corrupt magistrates and selfish speculators was ended, and in the language of a Federal Judge, "The law has been thoroughly vindicated and the evil against which it was directed has been completely crushed."

## LAW TRIUMPHS OVER LOTTERIES.

During his administration also the power of Congress under the commerce clause of the Constitution to prohibit the carriage from state to state of obnoxious subjects of traffic was affirmed by the Supreme Court, and the vicious lottery system made a thing of the past.

## ALIEN ANARCHISTS DEPORTED.

The right of the Immigration officers under the authority of Congress to detain and deport alien anarchists seeking entrance into the United States was upheld by the same court, and during his administration the Chinese exclusion

act was defended against renewed attacks upon its constitutionality.

The efficiency of the postal system was advanced by decisions upholding the power of the Postmaster-General to exclude from the mails matters relating to fraudulent schemes and lotteries; likewise the constitutionality of the so-called oleomargarine law was successfully defended, and the interests of the farmers of the country so materially advanced.

#### LAND FRAUDS PROSECUTED.

The fraudulent acquisition of public lands and the unlawful cutting of timber thereon were prosecuted with success. Under the law giving the Attorney-General the right to employ special counsel in special cases the work of Heney was begun and continued under Attorney-General Knox in the face of the most influential opposition.

#### POSTAL FRAUDS PROSECUTED.

It would be difficult to describe a more important work and a more gratifying result than that accomplished by the Department of Justice during this same Attorney-General's administration in the ferreting out and successful prosecution of those guilty of the gross frauds in the Post Office Department. The prosecutions instituted and the punishments that followed in these cases were in themselves sufficient to make his administration of that office more than

ordinarily notable, and it is safe to say that no other prosecutions ever had a more far-reaching influence in driving dishonesty from the public service and impressing upon public officials the heinous character of the offense that has its beginning in the breach of a public trust.

#### THE PACIFIC CABLE.

The satisfactory solution of the many problems submitted to his department in connection with the establishment of the Pacific cable resulted in an arrangement more favorable to the United States than that enjoyed at the same cost by any other government with reference to any other cable in the world. Not only was the commercial public protected by a provision guaranteeing reasonable rates, but the government messages are transmitted at rates fixed by the government itself, and in time of war its exclusive use by the government is conceded and granted.

In addition to all these features the government may take title to it at any time it wishes upon a valuation to be fixed by arbitrators chosen in the usual way.

In realms in which possibly no other statesman who ever held the office of Attorney-General of the United States was called upon to assert himself in critical emergencies, the same great intellect proved its capacity to immediately grasp and control the situations with which it was confronted.

## GAYNOR AND GREENE EXTRADITED.

In the famous cases of Gaynor and Greene, charged with the embezzlement of large sums of money in connection with the Savannah Harbor contracts, when they were captured in Quebec, and conveyed to Montreal, in the fastest boat the United States Government could secure, and the attempt of this country to extradite them was temporarily thwarted by the Canadian Court, which rendered a judgment discharging the prisoners, and the controversy had apparently ended in defeat for our government, our Attorney-General taking issue with many of the greatest lawyers of his time, and acting in direct conflict with the opinion of Sir Edward Clark, the leader of the English Bar, directed an appeal to the Privy Council in London, as a result of which in February, 1905, that tribunal rendered a decision in favor of the United States, and for the first time establishing the doctrine for which Attorney-General Knox contended. This later resulted in the extradition, trial and conviction of Gaynor and Greene, the story of which is too familiar to need recounting here.

At one stage of this proceeding the Attorney-General was offered \$600,000 to compromise the case, but he replied that the government did not need the money, but did need and intended to punish the defendants.

## PANAMA'S PERPLEXING PROBLEMS.

The other instance in which the Attorney-General proved

his great capacity for great duties was the handling of all the intricate legal matters pertaining to the acquirement of the title to the Panama Canal. Probably no other great undertaking in the world's history was attended in its infancy by the constant presentation of more intricate questions involving treaty rights, national and international obligations and the doctrine of private contracts, and all of them so intermingled and intertwined that it seems almost impossible to conceive of the successful strategy and substantial safety with which every step was taken and every American object attained.

An additional gratifying factor in connection with this incident was the fact that while matters of this magnitude have usually cost other governments sums reaching into millions, in this case it was conducted solely by Attorney-General Knox and his assistants, in this country, in Panama, and in Paris, at a cost to the United States Government of less than \$4,000.

#### A FITTING REWARD.

With this record to his credit, and with every line of it written into the history of his country, and with his splendid capacity proven for every great emergency, what more profitable act can his people perform with reference to their own welfare than to place him at the head of this great Republic, to which his heart has been so near, and to which his service has been so great?



***Letter from Attorney General Knox  
to Senator Hoar and Representative Littlefield***

DEPARTMENT OF JUSTICE,  
*Washington, D. C., January 3, 1903.*

HON. GEORGE F. HOAR,

*Chairman Committee on the Judiciary,*

*United States Senate.*

SIR: I have the honor to acknowledge the receipt of your communication of December 20, in which you state as follows:

"The Committee on the Judiciary will be glad to receive any communication you may be willing to make to them in relation to what are called trusts before proceeding to consider the various bills which are pending upon that subject. They will be glad to be informed as to what questions have been decided by the courts, what questions are pending in the courts, and any suggestions that your reflection or experience shall suggest as to what may be desirable in the way of further legislation."

I have the honor to submit, in response to this request, the following statements under the three heads which you have indicated, namely: The questions which have been decided

by the courts, the questions which are pending in the courts, and suggestions respecting further legislation.

(After answering the first and second questions, Mr. Knox said) :

### III.

#### SUGGESTIONS RESPECTING LEGISLATION.

I come now to your invitation to communicate to the committee "any suggestion that your reflection or experience shall suggest as to what may be desirable in the way of further legislation."

In view of the wide experience of the committee in dealing legislatively with legal and economic questions, I venture upon the line of suggestion with much hesitation and feeling that the utmost the committee desires in this respect is that some concrete thing be set down that may be considered, in connection with other views that may be presented as to what might be done within the short period allowed for consideration during the life of this present Congress.

I think it proper enough to briefly premise such suggestions as I shall make for immediate action by a statement of some of the reasons upon which they are based.

The end desired by the overwhelming majority of the people of all sections of the country is that combinations of capital should be regulated and not destroyed, and that measures should be taken to correct the tendency toward



monopolization of the industrial business of the country. I assume a thing to be avoided, even by suggestion, is legislation regulating the business interests of the country beyond such as will accomplish this end.

In my judgment, a monopoly in any industry would be impossible in this country, where money is abundant and cheap and in the hands or within the reach of keen and capable men, if competition were assured of a fair and open field and protected against unfair, artificial and discriminating practices.

Two or more persons or corporations can not by any combination or arrangement between themselves either contract or expand the rights of others to engage in a similar business. The utmost they can do is to discourage the disposition to do so by restricting the opportunities, or by securing to themselves some exclusive facilities or the enjoyment of some common facilities upon exclusive terms.

If the law will guarantee to the small producer protection against piratical methods in competition and keep the highways to the markets open and available to him for the same tolls charged to his powerful competitor, he will manage to live and thrive to an astonishing degree.

Individualism in production has its advantages as well as combination. Small individual enterprises not uncommonly spring up and thrive within the shadow of the larger ones, though enjoying none of their supposed advantages of con-

trol of sources of raw material, fuel, and transportation facilities, yet realizing large profit per ton of output because of the closer economies possible through direct, personal, interested management. Indeed, it is true that the great concerns whose stocks have been gathered in by the holding companies (the real trusts) are themselves largely but aggregations of successful smaller ones which, one by one, have made their competition so severely felt by an ambitious rival that he has absorbed them.

I believe the rebates and kindred advantages granted by carriers to large operators in the leading industries of the country, as against their competitors, in many years amounted to a sum that would represent fair interest upon the actual money invested in the business of such operators.

If substantially all of a given business is controlled by one company, the more threatening to potential competition does this iniquity become, and with greater timidity does such competition approach the field.

In some respects the holding company is weaker than its independent rivals. It pays as much, if not more, for labor. Advantage in the saving of an intermediate profit upon raw material and fuel is largely offset by the enormous cost of the sources of supply represented in high capitalization.

This capitalization, in almost every case of a holding company, represents far more than the aggregate intrinsic value of its constituent companies. The method of computing values

for purpose of concentration has invariably been upon earning power, and rebates have frequently swelled earnings so that enormous volumes of capital stock represent nothing but unfair advantage obtained over rivals.

The situation is much improved in respect to transportation discriminations within the last two years. This is the result, first, of a determined effort upon the part of the Government to apply existing laws in an effective way against discrimination; and second, to the fact that some of the higher-minded railroad managers of the country have exerted their large influence in the direction of equitable dealing with the shippers of the territory which they serve. Whether it is a consequence of these influences or a mere coincidence, it is nevertheless stated on high authority to be a fact that the embarkation of new capital in enterprises in competition with the supposedly controlled industries within the period named probably equals the capital of the trusts. The effect of certainty of protection against predatory competition can be safely prophesied to increase this figure.

The country is filled with men whose lives have been devoted to industry, who have developed and made profitable the properties now possessed by the trusts at prices far in excess of the cost of modernized duplicates, who will not long remain idle when assured that their capital and experience can be securely employed in the business to which they were trained.

Too much has been conceded in public discussion to the trusts in this respect. Organizations in one State to control production in other States of commodities consumed in all the States are as a rule devices of shrewd men to capitalize for their own benefit the country's prosperity. They are begotten in prosperous times. Poor times offer no inducements. They are essentially different from the combinations effected by producers, of their own motion, for economic reasons. Those which have been recklessly conceived contain within themselves the germ of their own undoing. They have, as a rule, only acquired the ownership of the stocks of the industries of the country which had already attained their gigantic stature. Their existence does not increase the productive capacity of the country, except as high prices of products have stimulated competition, nor have they because of their existence increased demand as the demand for products has never been thought to depend upon the title to capital stocks of producing companies.

My suggestion, therefore, is "that as a first step in a policy to be persistently pursued until every industry, large and small, in the country can be assured of equal rights and opportunities, and until the tendency to monopolization of the important industries of the country is checked, that all discriminatory practices affecting interstate trade be made offenses to be enjoined and punished." Such legislation to be directed alike against those who give and those who re-

ceive the advantages thereof and to cover discrimination in prices as against competitors in particular localities resorted to for the purpose of destroying competition in interstate and foreign trade, as well as discrimination by carriers.

Such practices are so obviously unreasonable that to inhibit them would be a measure of regulation of commerce to keep it free and unrestrained and not an attempt to exercise arbitrary power. Such legislation, to certainly reach producers guilty of practices injurious to national and international commerce, should, in my judgment, take the form of penalizing the transportation of the goods produced by the guilty parties, and the Federal courts should be given power to restrain such transportation at the suit of the Government.

It may be said that under the "Act to regulate commerce," a shipper may be punished for receiving rebates or special rates less than the lawful published rates; and that it is unnecessary to provide additional legislation in this respect to curb trusts, monopolies, and combinations. This, however, is an erroneous statement.

Whatever the Congress may have designed in the act to regulate commerce regarding the punishment of shippers for participation in violation of that act, as construed by the courts, their punishable offenses fall under two heads:

First. Where the shipper has solicited or participated in instances of unjust discrimination, and

Second. In cases of fraud perpetrated by him against the carrier, *ex. gr.*, by false representation of the contents of a package.

As to the first, the courts have held that to constitute unjust discrimination it is necessary to prove that at the time the lower unlawful rate was being granted to the favored shipper, the higher lawful rate was imposed against another shipper on like commodities between the same points.

In many cases of departure by a carrier from its published tariffs, the favored shipper has enjoyed his advantage for so long a time that all rivals have disappeared. In such cases, and they are the most numerous, no illegal discrimination exists; consequently the recipient of the unlawful rebates escapes the penalties of the act to regulate commerce.

The act prohibits the carrier from charging anyone a greater or less rate than the rates named in its schedules; but the penalties provided therefor have been held by the courts not to be applicable to any carrier that is an incorporated company.

The officers or agents of such incorporated company, who grant the rebate or make the unlawful concession in rates, are subject to indictment and punishment. That, however, is generally an impracticable remedy, because the agent who makes the concession is usually the only person by whom it can be ascertained that the rebate has been paid; and when

he has testified in relation to the matter he has thereby obtained amnesty from prosecution.

Even if the corporation and its officers could be effectively reached by criminal proceedings, the law leaves unrestrained the persons, corporations, and combinations who are beneficiaries of the unlawful rebates.

This *casus omissus* of the act to regulate commerce should be supplied by imposing a penalty upon the incorporated carrier and beneficiary alike, and the right of the courts to restrain such practices at the suit of the United States, a right not settled and now vigorously challenged, should be made certain.

I think the operation of such an act should be limited to the transportation by common carriers subject to the act to regulate commerce. This is necessary for the reason that there is no requirement of law that rates shall be published by common carriers, except by railroad, or railroad and water carriers acting as one line. When the act to regulate commerce was under consideration it was deemed impracticable if not unwise to attempt to regulate the rates of water or other common carriers. It was understood that in the nature of things water rates could not be stable.

In addition to that it was believed that water competition must be unrestricted. As it is the least expensive means of transportation, it, wherever it could directly or indirectly compete with carriers by rail, would, approximately, furnish

a basis for rates by railroad, and measurably keep such rates within the limits of extortion.

So that if provision is made by law to prevent rebates, a standard or established schedule must be referred to; and as the admitted abuse of magnitude has been in the favors granted by railroad companies, their rates, which the law requires shall be made public, should be taken as the rates which must be adhered to and made equal to all the people under similar conditions.

It should, therefore, be made unlawful to transport traffic by carriers subject to the "act to regulate commerce" at any rate less than such carriers' published rate, and all who participate in the violation of such law should be punished.

An additional provision should be made to reach corporations, combinations, and associations which produce and manufacture wholly within a State, but whose products or sales enter into interstate commerce. It should relate, first, to such concerns as fatten on rebates in transportation, and, second, to concerns which sell below the general price of a commodity in particular localities, or otherwise in particular localities wantonly seek to destroy competition. These could be excluded with their commodities, products, or manufactures from crossing State lines.

As the power of Congress over interstate commerce is plenary, excepting as it may be limited by the Constitution,



it is believed that it may impose such a punishment for the violation of the public policy of the nation.

A comprehensive plan should be framed to enable the Government to get at all the facts bearing upon the organization and practices of concerns engaged in interstate and foreign commerce essential to a full understanding thereof and to compel the observance of the law. This should be framed upon tested lines.

A commission should be created to aid in carrying out the provisions of the Act of July 2, 1890, and any further legislation relating to commerce. It should be the duty of such commission, among other things, to make diligent investigation into the operations and conduct of all corporations, combinations, and concerns engaged in interstate or foreign commerce, and to gather such information and data as would enable it to make specific recommendations for additional legislation for the regulation of commerce, and annually, and oftener if it shall seem needful, to make report thereon to the President.

Such a commission should have authority to inquire into the management of the business of such corporations and concerns, to keep itself informed as to the manner and method in which the same is conducted, and to obtain from such concerns full and complete information necessary to enable the commission to perform the duties and carry out the objects for which it is created; it should have the power.

when in its judgment it is necessary, to require reports from them and to require from them and their officers, agents, and employees specific answers to all questions upon which the commission needs information. As there are no means now provided by law for compelling testimony, such a law should provide that no person should be excused from attending and testifying or from producing books, papers, contracts, and documents before such commission or the courts.

Of course, the general scheme of legislation to correct trust abuses should be developed with great care, for it is not nearly so important to act quickly as to act wisely. Primarily, the question of the power of Congress to reach what the Sherman Act seems to have missed should be authoritatively determined, as upon that proposition the whole structure of effective regulative legislation must rest. We should at once take the first steps by a law aimed at what we certainly know to be unreasonable practices directly restrictive of freedom of commerce upon which the fundamental question can be raised, and by a law conferring upon the Government a general supervisory power as above outlined.

Another step in legislation which I earnestly recommend, and which will, if enacted, greatly hasten a solution of the problem, is that an act be passed as soon as possible to speed the final decision of cases now pending and others that may be raised under the anti-trust law. I refer to an act to

enable the Attorney-General to secure the original hearing by a full bench of the circuit judges in the circuit wherein is pending any suit brought by the United States under the anti-trust law which the Attorney-General certifies to the court to involve questions of great public importance, and giving an appeal from their decision directly to the Supreme Court of the United States in such cases, and also giving an appeal directly to the Supreme Court in all pending cases in which the United States is a party which have been heard and are as yet unappealed.

There are a number of cases now provided by statute where appeals may be made directly to the Supreme Court from the district and circuit courts, namely, in cases in which the jurisdiction of the court is in issue, from final sentences and decrees in prize cases, in cases of conviction of a capital or otherwise infamous crime, in cases that involve the construction or application of the Constitution of the United States, in cases in which the constitutionality of any law of the United States, or the validity or construction of any treaty is drawn in question, and in cases in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States.

The class of cases that I suggest should be brought within this rule, it seems to me, is of as great importance as any of those referred to. The suggested provision requiring a full bench of the circuit judges would insure the cases re-

ceiving as full consideration before presentation to the Supreme Court as if heard by the United States Circuit Court of Appeals.

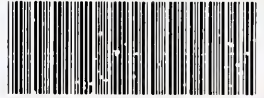
It is too much to say that with these gaps closed the scheme of governmental regulation will be complete; but it is clear that without some similar legislation it would continue to be inadequate. And such legislation will make a long, first stride in advance.

Very respectfully yours,

P. C. KNOX,  
*Attorney-General.*



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